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NO. 179

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

GENERAL OUTDOOR ADVERTISING CO., INC.,
Petitioner

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Claims in this case.

OPINION BELOW

The opinion of the United States Court of Claims (Appendix, infra. p. 1-a) is reported in 169 F. Supp. 947.

JURISDICTION

The judgment of the United States Court of Claims was entered on February 11, 1959 (Appendix, infra., pages 12-a, 13-a. A timely petition for reconsideration was denied on April 8, 1959. A petition for rehearing (in part) on the merits of the earlier decision of March 6, 1957 was filed and was denied on April 29, 1959. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1255.

QUESTIONS PRESENTED

1. Whether the two-year limitation period provided in Section 322(b)(1) of the 1939 Internal Revenue Code begins to run with respect to an amount of money deposited on account with a Collector before the full tax assessed, with respect to which the amount was deposited, has been paid, which in this case was on September 2, 1948.

2. Whether a waiver of a 90-day notice of deficiency is equivalent to a waiver of the restrictions (provided in subsection (a) of Section 272 of the 1939 Internal Revenue Code) on the assessment and collection of a deficiency (as provided in Section 272(d) of that code).

3. Whether a statement made by a taxpayer that it does not desire to protest before a Revenue Agent in charge a part of a proposed deficiency in tax and a remittance on account to the Collector of an amount which is less than the part of the proposed deficiency not protested are equivalent to a waiver (as provided in Section 272(d) of the 1939 Internal Revenue Code) of the restrictions on the assessment and collection of the amount so remitted.

4. Whether a payment on account in respect of a deficiency in tax, subject to final determination, under the provisions of the Internal Revenue Code of 1939, (excepting Section 272(d)) may be legally assessed as a tax?

5. Whether the issuance of a 90-day notice of deficiency (provided for in Section 272(a)(1) of the 1939 Internal Revenue Code) is essential to the validity of an assessment of Federal income and excess profits taxes where, prior to assessment, the taxpayer has filed with the Commissioner, a waiver under Section 272(d).

STATUTES INVOLVED

The statutory provisions involved are Internal Revenue Code of 1939, Sec. 322(b)(1) (26 U.S.C. 1952 ed., Sec. 322(b)(1)); Sec. 272(a)(1) (26 U.S.C. 1952 ed., Sec. 272(a)(1)); Sec. 272(d) (26 U.S.C. 1952 ed., Sec. 272(d))—which appear in the Appendix, infra., pages 14, 15-a.

STATEMENT

On March 6, 1957, the court below entered judgment in favor of taxpayer calling for a determination of the amounts recoverable for 1944 and 1945 under its Rule 38(c). This decision is reported in 137 Ct. Cls. 607, 149 F. Supp. 163. The court held that taxpayer, for the year 1944 was limited in its recovery to amounts of tax paid within the two-year period prior to April 3, 1950, the date when a claim for refund on the merits was filed. In this proceeding under its Rule 38(c) the court entered judgment on February 11, 1959, reported at 169 F. Supp. 947 for recovery by taxpayer of $108,681.88 with interest as provided by law. It held the net overpayment of tax for 1945 to be $48,221.41 and for 1944 to be $60,460.47. The amount for 1944 is in contest. Taxpayer contends the amount should be $199,322.21.

The essential facts as found by the court below (Appendix, infra., p. 7-a), are summarized, as follows:

Under date of July 23, 1947 the Revenue Agent in Charge at Chicago sent taxpayer a notification of a proposed deficiency in excess profits tax for 1944 of $419,193.64 and an overassessment of income tax of $102,816.60, based on a revenue agent's report dated May 26, 1947. Enclosed with the letter was a U. S. Treasury Form 874 calling for the execution of a Section 272(d) waiver and agreement to the overassessment or the filing of a Protest if it did